

Lawrence E. Wacker, Jr.
Chairman and
Chief Executive Officer

SBC Communications Inc.
173 E. Houston Street
San Antonio, Texas 78205
Phone (214) 351-5401



May 10, 1998

Richard C. Notebaert
Chairman of the Board, President
and Chief Executive Officer
Ameritech Corporation
30 South Wacker Drive
Chicago, IL 60606

Dear Dick:

Congratulations on the successful conclusion of negotiations for the merger of SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech"). This merger will benefit the customers and employees of both companies, as well as our respective shareholders. Moreover, this merger will create and launch a new national and international competitor and enhance competition throughout the country.

I also want to emphasize that we share the philosophy, and commit to continuing Ameritech's record of providing an advanced telecommunications network offering high quality services, significant employment opportunities and to retaining its position as a prominent corporate citizen contributing to the residents and overall economy of the states served by Ameritech. As an indication of our mutual commitment to these goals, following the consummation of this merger, SBC will:

- (i) maintain Ameritech's headquarters in Chicago and state headquarters in each of your traditional states;
- (ii) continue to use the Ameritech name in each state;
- (iii) continue Ameritech's historic levels of charitable contributions and community activities;
- (iv) continue to support economic development and education in Ameritech's region consistent with Ameritech's well established commitments in these areas;
- (v) insure that, as a result of the merger, employment levels in your five state region will not be reduced due to this transaction and, in fact, as we discussed this transaction is based on growth and we fully expect employment levels to increase as a result of the merger; and

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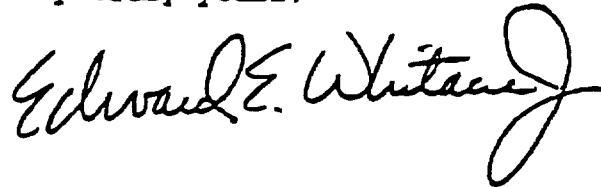
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Mr. Notebaert
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(vi) continuing to invest capital necessary to support your network consistent with Ameritech's past practices.

Dick, I appreciate the efforts of you and your team in bringing about the successful conclusion of these negotiations. We look forward to the opportunity to work with the outstanding employees of Ameritech and to serving Ameritech's customers for a long time into the future.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward E. Whitacre". The signature is fluid and cursive, with a large, stylized "J" or "G" at the end.

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BEFORE THE ILLINOIS COMMERCE COMMISSION OF ILLINOIS**Docket No.: 98-0555****Data Request Originated By: Nextlink Illinois****Date of Request: October 14, 1998****Question No.: 24****Request for Document No.: N/A****Date of SBC's Response: October 28, 1998****Respondent's Name: James S. Kahan****Respondent's Title and Company: Senior Vice-President, Corporate Development,
SBC Communications Inc.****Question:**

Will Ameritech or the combined entity maintain its current level of staffing in Ameritech Long Distance Industry Services? If not, please indicate whether staffing will increase and if so, by what percentage? If staffing will decrease post-merger, please indicate by what percentage such staffing will decrease.

Answer:

For the reasons stated in SBC's general statement on post-merger planning (See Response to Nextlink interrogatory 1), SBC does not have any specific plans regarding the level of staffing in Ameritech Long Distance Industry Services. However, as evident from SBC's commitments to Ameritech, its employees and customers and our actions in California and Nevada following the SBC/PTG merger, SBC is committed to employment opportunities for employees.

On May 10, 1998, Mr. Edward E. Whitacre, Jr., the Chairman of SBC, wrote a letter to Ameritech's Chairman, Mr. Notebaert, in which SBC made certain commitments to Ameritech, its employees and customers. See attachment to Nextlink Question 23. In addition to several other commitments, SBC committed to (i) maintain Ameritech's headquarters in Chicago, (ii) maintain Ameritech's state headquarters in Illinois, and (iii) insure that, as a result of the merger, employment levels in Ameritech's five state region will not be reduced due to this transaction. Mr. Whitacre's letter also affirms SBC's belief that this transaction is based on growth, and SBC fully expects employment levels to increase as a result of the merger.

SBC wants to emphasize to the employees and customers of Ameritech that Ameritech will continue to be operated to the fullest extent possible by the current management team, that the employees of Ameritech will continue to be available to provide the same high quality service which the customers of Illinois have come to expect and that SBC is committed to insuring that Ameritech continues to play an important role in the State of Illinois.

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SBC is committed to the principle that this merger is about growth. We are committed to providing significant employment opportunities to the employees of Ameritech. In this regard, SBC has committed to ensure that, as a result of the merger, employment levels in Ameritech's five-state region will not be reduced due to this transaction. Ameritech recently announced that it will eliminate 5,000 jobs primarily in its cellular and alarm monitoring businesses. The purpose of SBC's commitment is to ensure Ameritech's employees that this merger will not result in any additional reduction in employees beyond those announced reductions.

SBC's commitment to employees and service to customers is evident from our performance in California. Since our merger with Pacific Telesis Group through August 14, 1998, total employment in California is up more than 2,200 employees.

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Ameritech CEO Sees \$1.5B In Rev From Data Traffic In '98

Dow Jones News Service via Dow Jones

NEW YORK (Dow Jones)--Ameritech Corp. (AIT) Chairman and Chief Executive Richard C. Notebaert predicts that 99% of all network traffic will be data by the year 2010.

Speaking at The Wall Street Journal Technology Summit, Notebaert said that 1998 marks the first year that more than half the traffic for Ameritech will be data.

"Everything today is Internet-defined," he said. In the near future, he added, "you'll be up on the Internet all the time. You won't have to dial."

Notebaert said he expects Ameritech will see \$1.5 billion in revenue from data alone in 1998. To contextualize that, he said that total revenue for 1997 was \$16 billion. He also maintained that Ameritech has done everything it needs to do to open its markets to local competition.

"On the 14-point checklist, we're done," he said, referring to the list of obligations the Federal Communications Commission requires of Baby Bell companies before they can offer long distance in their home territory. "There's nothing more we can do. If people don't choose to compete on a residential level, that's up to them."

- Craig Karmin; 201-938-2020

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

SBC Communications, Inc.,)	
SBC Delaware Inc.)	
Ameritech Corporation, Illinois Bell)	
Telephone Company d/b/a Ameritech Illinois,)	
and Ameritech Illinois Metro, Inc.)	
)	98-0555
Joint Application for approval of the)	
Reorganization of Illinois Bell Telephone)	
Company d/b/a, and the reorganization of)	
Ameritech Illinois Metro, Inc. in accordance)	
With Section 7-204 of the Public Utilities Act)	
and for all other appropriate relief.)	

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ILLINOIS
COMMERCE COMMISSION

INITIAL BRIEF OF NEXTLINK ILLINOIS, INC.

NEXTLINK Illinois, Inc. ("NEXTLINK") hereby respectfully submits this Initial Brief and urges the Illinois Commerce Commission ("Commission") to reject the Joint Application of SBC Communications Inc. and SBC Delaware Inc. ("SBC"), Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, and Ameritech Illinois Metro, Inc. ("Ameritech") in the instant proceeding because it fails to meet the requirements for approval set forth in the Illinois Public Utilities Act ("PUA" or the "Act"). (220 ILCS 5/1-101, et. seq.).

I. BACKGROUND

SBC/Ameritech submitted a Joint Application dated July 24, 1998 for Commission approval of SBC's proposed acquisition of Ameritech under the Act. Direct, rebuttal and surrebuttal testimony were filed by the parties. In addition, the parties filed memoranda in response to questions presented in a November 20, 1998 Notice of Ruling ("Notice of Ruling")

which was made part of the record. Evidentiary hearings were held, and at the conclusion of the hearing on January 29, 1999, the record was marked "Heard and Taken."

II. APPLICABLE LAW

Section 7-204 of the PUA requires that the Commission reject the proposed acquisition unless it makes both the general finding that the acquisition will not adversely affect Ameritech Illinois' ability to perform its duties under the Act and seven other findings that the acquisition meets specific criteria. (220 ILCS 5/7-204). Most significantly, the Commission must find that "the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction" (220 ILCS 5/7-204(b)(6)) and that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers." (220 ILCS 5/7-2-4(b)(7), emphasis added). As discussed infra, the Commission cannot make either finding based on the record in this proceeding. Therefore, the Commission is required by statute to disapprove SBC's proposed acquisition of Ameritech.

Unless the Commission disagrees with NEXTLINK and decides that it can make the necessary 7-204 findings based on the record in this proceeding, the Commission cannot approve the proposed acquisition. On the other hand, if the Commission finds the proposed acquisition does satisfy each and every criteria set forth in Section 7-204(b), the Commission still has authority to make its approval conditional on "such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers." (220 ILCS 5/7-204(f)).¹ If the Commission does approve the acquisition, the Commission's broad

¹ In its November 20 Notice of Ruling, the Hearing Examiners sought the parties' comment on whether other statutory requirements must be satisfied for Commission approval. As NEXTLINK indicated in our response to the

authority to impose conditions to protect Ameritech's customers gives the Commission leeway to take action necessary to insure a competitive local telecommunications market in Illinois.

The competitive checklist set forth in Section 271 of the Telecommunications Act of 1996 (47 U.S.C. 271) ("Telecom Act") is the applicable statutory standard to measure whether a market is open to local competition. Ameritech has not received approval under Section 271 in Illinois (or any state). Therefore, as discussed in detail infra, the Commission should condition any approval of the proposed acquisition on Ameritech meeting the competitive checklist in Illinois prior to implementation of the acquisition. Additionally, as discussed infra, the Commission should require Ameritech to immediately implement other measures designed to protect competitors based on the conditions and requirements adopted by the Federal Communications Commission ("FCC") in its approval of the merger of Bell Atlantic Corporation ("Bell Atlantic") and NYNEX Corporation ("NYNEX") with appropriate modifications based on experience since that merger.

III. ANALYSIS OF EVIDENCE

A. The Commission Cannot Approve the Proposed Acquisition Based on the Record in This Proceeding

SBC and Ameritech have failed to prove that SBC's proposed acquisition of Ameritech meets the criteria set forth in Sections 7-204(b)(6) and 7-204(b)(7) required for Commission approval. (220 ILCS 5/7-204(b)(6), (b)(7)). Moreover, the evidence presented by other parties

Notice of Ruling, Article VI and Sections 7-101 and 7-102 of Article VII of the Public Utilities Act also apply because this transaction involves Ameritech, a local exchange telecommunications carrier with more than 35,000 subscriber access lines. (220 ILCS 5/13-504(a); 220 ILCS 5/6-101, et seq.; 220 ILCS 5/7-101 and 5/7-102). However, NEXTLINK has not addressed these issues in our Initial Brief because the Commission must reject the proposed acquisition based on implementation of Sections 7-204(b)(6) and 7-204(b)(7) alone.

in this proceeding, who all oppose the acquisition, clearly demonstrates that the acquisition does not meet these criteria. Therefore, the acquisition must be rejected by the Commission.

**1 The Commission Cannot Make the Required Section 7-204(b)(6)
Finding that the Acquisition Will Not Have a Significant Adverse
Effect on Competition**

Section 7-204(b)(6) states that as a prerequisite for approval the Commission must find that the proposed acquisition "is not likely to have a significant adverse effect on competition" (220 ILCS 5/7-204(b)(6)). On the basis of this record, the Commission cannot make this required finding. Contrary to the weak assertions of SBC/Ameritech that there is no anti-competitive effect, this acquisition would create a mammoth monopoly that removes a potential competitor from Illinois, would adversely affect Illinois' long distance market and would harm competitors for local telecommunications service. Moreover, the acquisition is based on flawed concepts of retaliatory entry and national strategy. Perhaps most importantly, implementation of the acquisition would permit a monopoly with a clearly anti-competitive track record in California and Texas to take over the critical responsibility of providing monopoly local telecommunications service in Illinois.

(a) Creation of a Mammoth Monopoly

The proposed acquisition will result in SBC, a company valued at approximately \$80 billion acquiring Ameritech, a company with approximately \$28 billion in assets. (NEXTLINK Exhibit 1). A combined SBC/Ameritech would be an enormous incumbent monopoly with control over monopoly bottleneck facilities in several key markets. As NEXTLINK witness Daniel Gonzalez testified:

A combined SBC and Ameritech would dominate the market as the largest local phone company in the United States, with control of more than fifty-seven million phone lines from Chicago to San Francisco. It is in those markets, including Illinois, where SBC and Ameritech have incumbent status, monopoly control, almost one hundred percent market share and ownership of essential facilities that the proposed acquisition's negative effect will be the greatest.

(NEXTLINK Exhibit 1 at 6).

SBC and Ameritech claim that this tremendous size is needed for their companies to survive in the rapidly changing competitive telecommunications market. (SBC/Ameritech Exhibit 1.0 at 4). In contrast to this claim, several competitive local exchange carriers ("CLECs") have entered the Illinois market as facilities-based carriers and thereby dispelled the notion that enormous size is necessary to compete. (NEXTLINK Exhibit 1 at 7; See also, GCI Exhibit 1.1 at 39). Many of these CLECs are dwarfed by the size of either SBC or Ameritech but have still pursued market entry on a national scale. (NEXTLINK Exhibit 1 at 7).

(b) Removal of a Potential Competitor

The record clearly establishes that the acquisition of Ameritech by SBC removes a potential competitor from Illinois. SBMS Illinois Service, Inc. ("SBMS"), an SBC affiliate, has existing local exchange carrier authority in Illinois and an \$80-billion parent with extensive local exchange experience. SBMS therefore was poised to be a facilities-based local exchange competitor to Ameritech. (ICC Staff Exhibit 4.00 at 26-33). While SBC has maintained that no competitor would be eliminated from Illinois, Ameritech witness David Gebhardt testified that prior to the announcement of the proposed acquisition, he considered SBMS a potential competitor. (Transcript at 929 and 930). Clearly, the loss of this financially well-heeled potential competitor is likely to have a significant adverse effect on competition in Illinois.

(c) Adverse Impact on Long Distance in Illinois

The removal of a potential competitor in Illinois produces an adverse impact not only on the state's local exchange market but also on the long distance market. Because SBC would have been outside of its incumbent monopoly territory if it provided service in Illinois, it could have offered long distance service, either separately or bundled with its local service offering, something that Ameritech cannot do until it receives approval to do so under Section 271 of the Telecom Act. SBC has no projection as to when a post-acquisition SBC/Ameritech will be able to provide long distance services in Illinois. (Transcript at 538). Therefore, the loss of an \$80 billion competitor in the long distance market is likely to have a significant adverse impact on competition in Illinois.

(d) Lack of Support for CLECs

There is no evidence in the record that a combined SBC/Ameritech will not act anti-competitively with respect to CLECs. In fact, when SBC specifically was requested to provide detailed information on the structure of the post-merger organization that will support CLECs, SBC responded that:

In advance of post-merger planning with Ameritech, SBC does not have additional details such as a description of the wholesale and retail units of the combined entity as well as an identification of which entity will be responsible for CLECs in the Midwest, post merger. SBC and Ameritech have not yet developed any in-region post merger business, operational or implementation plans

(NEXTLINK Exhibit 2 at 4 and Attachment 1 thereto).

Further, SBC has stated that "it is not known what the combined entity will provide for complete electronic interface (operational support systems) to facility-based CLECs."

(NEXTLINK Exhibit 2 at 5 and Attachment 2 thereto). Because SBC/Ameritech would be the incumbent monopoly if the merger is approved, the much smaller CLECs will have no option but to interact with the post-acquisition Ameritech. Based on the record in this proceeding, SBC/Ameritech has failed to show that the interface between CLECs and SBC/Ameritech is not likely to have a significant adverse effect on competition.

(e) Loss of a Competitive Benchmark

If approved, this acquisition would reduce the number of RBOCs from five to four, thereby reducing the amount of valuable comparative carrier information available for Commission review regarding performance levels throughout the country. (NEXTLINK Exhibit 1 at 12). The reduction in the number of RBOCs will make it easier for SBC-Ameritech to provide poorer quality service to its competitors and engage in anti-competitive activities because there will be fewer companies for the Commission to use as benchmarks to ensure non-discriminatory treatment under the Telecom Act. (NEXTLINK Exhibit 1 at 12-13).

(f) SBC's Terrible Track Record

The Commission has at its disposal important facts to assist it in determining whether the acquisition is likely to have a significant adverse effect on competition: SBC's track record in states where it is the existing incumbent monopoly. In fact, analysis of SBC's track record indicates that SBC's acquisition of Ameritech is likely to have a significant adverse effect on competition. Indeed, there is even evidence to indicate that SBC does not comply with state and federal commission requirements. (ICC Staff Exhibit 3.0 at 17). Moreover, SBC's actions

consistently have demonstrated its adverse impact on competition in other states where it is the incumbent monopoly.

In determining that SBC has failed to satisfy the Section 271 competitive checklist, the Public Utility Commission of Texas recently stated that SBC needed to show "by its actions that its corporate attitude has changed and that it has begun to treat CLECs like its customers." (Investigation of Southwestern Bell Telephone Company's Entry into the Texas IntraLATA Telecommunications Market, Project No. 16251, Public Utility Commission of Texas, Commission Recommendation (May 21, 1998)). SBC also has demonstrated its aversion to open markets by suing to overturn Section 271 of the Telecom Act. (NEXTLINK Exhibit 1 at 10).

SBC's record in California since its acquisition of Pacific Bell Telephone Company ("Pacific Bell") also raises very serious questions about SBC. The California Office of Ratepayer Advocates ("ORA") reported that the impact of SBC's control of Pacific Bell has been less competition and worse service in California. (Cross Exhibit 12; Report on Pacific Bell's Handling of Residential Service Ordering (Redacted Version), Office of Ratepayer Advocates, California Public Utilities Commission (Cal. P.U.C.), (June 4, 1998), ("California Report"), emphasis added; See also, NEXTLINK Exhibit 1 at 13).

The California Report found, inter alia, that (1) Pacific Bell's practices are questionable in privacy protection for customers and focus on sales rather than on customer service quality assurance; (2) Pacific Bell violates California code requirements regarding provision of customers with sufficient information to make an informed choice among services; (3) Pacific Bell's failure to provide customers with critical information about Caller ID service and how it can be blocked flies in the face of "clear [California Public Utilities] Commission direction on how this service was to be handled;" and (4) public safety and sound public policy dictates that

when it comes to Caller ID, Pacific Bell's "aggressive marketing practice of aggressively and deceptively" advising customers not even inquiring about purchasing a product to change their privacy status should be prohibited. (Cross Exhibit 12 at 6, 8, 12 and 13).

The final conclusions of the California Report are scathing:

The implications of Pacific [Bell]'s CPNI statements, ULTS [Universal Lifeline Telephone Service] qualifications spiel, Caller ID blocking descriptions and other important customer information go beyond unwanted purchases to issues of service quality, misrepresentation, safety and basic consumer protection. [Office of Ratepayer Advocate] observed that Pacific [Bell] imposed procedures on its service representatives which could deceive customers and/or put them at risk for unauthorized service ordering. Pacific [Bell]'s service representatives work furiously in a sweat shop environment to get the orders through and make sure that they make all of the sales contacts in every call. The service representatives do not always verify the caller's identity. They seemed lax with regard to ensuring customers were actually eligible for ULTS service before discussing how to get that service, and, after subscribing customers to ULTS or other residential service then moved on to the many optional features, which carry the term "basic" or "essential" in their brand name and which may sound to customers as if they are part of basic telephone service. The service representatives do not accurately describe the limits of Caller ID service or the benefits and detriments of the various blocking options associated with Caller ID. The pressure Pacific [Bell] has put on its service representatives to sell products puts the customers' service, privacy, and potentially, safety at risk.

(Cross Exhibit 12 at 21-22).

NEXTLINK's California affiliate has everyday, real life experience with SBC. NEXTLINK's experience demonstrates that SBC has acted to frustrate and limit competition in California. In fact, NEXTLINK has experienced discrimination in four key areas: (1) interconnection, (2) access to unbundled loops, (3) number portability, and (4) access to 411 and E911. For example, Pacific Bell requires NEXTLINK to route all traffic to a single access tandem denying NEXTLINK the network redundancy needed to ensure its customers can complete their calls and that Pacific Bell uses within its own network. Pacific Bell has also

limited NEXTLINK's ability to compete by providing inadequate unbundled loop provisioning to NEXTLINK. (NEXTLINK Exhibit 1 at 13)

Pacific Bell further limits NEXTLINK's access to unbundled loops by requiring NEXTLINK to obtain collocation in every central office where it seeks to access unbundled loops. In addition, Pacific Bell often fails to coordinate its implementation of number portability with the transfer of a customer from Pacific Bell to NEXTLINK. (NEXTLINK Exhibit 1 at 14).

These are only but a few examples of the continuing efforts of Pacific Bell to delay and damage competition in the state of California. Clearly, NEXTLINK's experience with Pacific Bell has not shown improvement since its acquisition by SBC, but continued discriminatory treatment. (Ibid.).

In sum, SBC's track record clearly raises serious questions about its commitment to competition. As Charlotte F. TerKuerst testified on behalf of Government and Consumer Intervenors, "resistance and obstructionist behavior by the incumbent carrier can create a severe barrier to entry, which can thwart or at a minimum, delay significantly, entry by CLECs." (GCI Exhibit 2.0 at 48). It is therefore an inescapable conclusion that introduction of a company into Illinois that needs to change its attitude toward competitors is likely to have a significant adverse effect on competition.

(g) The Failure of the Retaliatory Entry Theory . . .

Despite the tremendous evidence regarding the anti-competitive effects of the proposed acquisition, SBC/Ameritech argue that there is not likely to be a significant adverse effect on competition on the grounds that the concept of "retaliatory entry" will further competition in Illinois. But SBC's decision to buy the Ameritech markets rather than become an actual

competitor in Illinois demonstrates the failings of this contention. (SBC/Ameritech Exhibit 1.0 at 23).

Retaliatory entry is a competitive response theory which posits that when an incumbent monopoly enters the market of another incumbent monopoly as a competitor, the incumbent experiencing the competition will respond in a competitive manner in the other incumbent monopoly's market. (Ibid. at 23). The only factual evidence in this record regarding this theory, which concerns Ameritech and SBC themselves, makes it completely unsupportable.

Prior to announcement of the acquisition, Ameritech pursued a strategy of entering out of region markets in several states, including Missouri, California and Texas, where SBC is the incumbent monopoly. (NEXTLINK Exhibit 2 at 5). As the record shows, Ameritech had taken several specific steps to enter these markets, including obtaining state certification, signing interconnection agreements with SBC, filing tariffs with the Missouri commission and announcing that it intended to provide services in key markets in those states. (NEXTLINK Exhibit 1 at 7). In fact, the March 1998-1999 Southwestern Bell phone book for St. Louis, Missouri lists Ameritech as an "Alternative Local Service Provider." (Cross Exhibit 9). Ameritech witness Campbell acknowledged that this listing had been requested by Ameritech and that Ameritech was holding itself out to the public as a local service alternative. (Transcript at 1093 and 1098).

If the competitive response argument set forth by SBC is correct, then SBC would have responded to Ameritech's entry into SBC monopoly territory by entering Ameritech's market in Illinois or in other Ameritech states as an actual competitor. In fact, SBC did not transform SBMS from a potential competitor to an actual competitor, and has instead sought to acquire Ameritech and buy its markets. (NEXTLINK Exhibit 2 at 5).

In an attempt to now downplay Ameritech's entry into the St. Louis market, Ameritech witness Campbell identified several problems that Ameritech experienced in its St. Louis service trial and stated that the "project is a poster boy for why RBOCs would not have invaded each other." (Transcript at 1017). Apparently, even Ameritech does not believe in retaliatory entry.

In short, SBC's choice to buy the Ameritech markets in Illinois rather than compete for them shows that the concept of retaliatory entry is without merit. Clearly, SBC's failed theory of retaliatory entry does not demonstrate that this acquisition is not likely to have a significant adverse effect on competition.

(h) The Flawed National-Local Strategy

According to SBC, the primary purpose for its acquisition of Ameritech is that it is necessary to implement what it terms as its "National-Local Strategy". (SBC/Ameritech Exhibit 1.0 at 6 and 7). The National-Local Strategy concept is that SBC must acquire Ameritech to be a company large enough to enter the thirty largest markets in which it is not the incumbent monopoly in order to serve Fortune 500 companies, which SBC describes as "anchor tenants." (Ibid.).

Based on SBC's own testimony, however, the National-Local Strategy is far from viable. SBC witness Kahan testified that SBC plans to immediately implement the strategy if the acquisition is approved, but he stated that the National-Local Strategy cannot be achieved without in-region long distance authority because SBC-Ameritech could not effectively compete without it. (Transcript at 521, 524-25). Neither SBC nor Ameritech has received in-region long distance authority and there is simply no way to know when it will be received, if ever, in any SBC-Ameritech state. In fact, Mr. Kahan testified that SBC does not even have a projection of

when it might have long distance authority in Illinois. (Transcript at 538). Therefore, in light of SBC's own admissions regarding the uncertainty of when it will be able to provide in-region long distance, it is clear that the National-Local Strategy is merely a thin veneer used to cover the real purpose of the acquisition: the consolidation of monopoly markets rather than national competition.

Because much smaller competitors are competing on a national scale, it simply is not credible that a company the size of SBC is not large enough to compete outside its own incumbent monopoly region without acquiring Ameritech. (GCI Exhibit 1.1 at 39). Moreover, the evidence in this proceeding shows that even if actually implemented the National-Local Strategy would do nothing to further competition in Illinois. If SBC implements the strategy, by its very definition it will be carried out in states other than Illinois. On the other hand, Illinois will be left with an existing and much larger incumbent monopoly. (NEXTLINK Exhibit 1 at 5).

SBC attempts to paper over the fact that there is no competitive benefit to Illinois in the National-Local Strategy by stating that under the concept of retaliatory entry, other incumbent monopolies will come to Illinois to compete after their markets are entered by SBC". (SBC/Ameritech Exhibit 1.0 at 9-10). As stated supra, SBC's own conduct demonstrates the fallacy of the retaliatory entry theory. Therefore, the National-Local Strategy offers nothing for Illinois and in no way helps SBC/Ameritech in its vain attempt to prove that this acquisition is not likely to have an adverse impact on competition.

**2 The Commission Cannot Make the Required Section 7-204(b)(7)
Finding That the Acquisition Is Not Likely To Result In Any Adverse
Rate Impacts on Retail Customers**

Section 7-204(b)(7) of the Act states that in order to grant approval for the acquisition of Ameritech by SBC the Commission must find that the acquisition is not likely to result in any adverse rate impacts on retail customers. (Section 7-204(b)(7), emphasis added). However, SBC and Ameritech have not demonstrated that the acquisition is not likely to result in any adverse rate impacts. Rather, the evidence in the record is overwhelmingly to the contrary.

The evidence shows that the specific structure of the acquisition of Ameritech is likely to pressure SBC to generate additional revenues from Illinois consumers in all market segments in which it does not face price-constraining competition. (GCI Exhibit 1 at 53). This pressure comes from the enormous premium that SBC will be paying to acquire Ameritech, which has been valued at \$47 billion over the net book value of Ameritech's assets and \$13.2 billion over the pre-announcement market value of Ameritech stock. (Ibid.).

Allocating the premium over book value specifically to Ameritech Illinois assets, SBC would need to recover \$19.7 billion in overall investment in Ameritech Illinois (including \$5.5 billion in net book value rate base, plus an additional \$14.2 billion in premium). (Ibid.). In other words, while Ameritech's investment in Illinois Bell is about \$5.5 billion, SBC will have invested an additional \$14.2 billion that it will need to recover from its Illinois operations. (Ibid.). Additional pressure to raise rates in Illinois stems from the fact that SBC's business plan provides that revenues from its Ameritech and other non-competitive service markets will be utilized to support out of region competitive ventures. (GCI Exhibit 1 at 53).

As structured, the acquisition also will result in telecommunications services already priced above cost being priced even higher above cost. (ICC Staff Exhibit 3.0 at 40). As Commission Staff witness Ms. Toppozada-Yow testified, the Commission in applying Section 7-

204(b)(7) must determine "whether or not, for those services priced above cost, the proposed merger will move Ameritech Illinois' rates further away from cost." (Ibid.). Absent dubious merger-related synergies, Ms. Toppozada-Yow testified that such adverse rate impacts would occur. (Ibid.).

SBC has already shown its desire to raise rates in California. Pacific Bell has submitted a number of applications and miscellaneous tariff filings to the California Public Utilities Commission seeking increases in rates since it took over control of Pacific Bell, though to date none have been approved. (GCI Exhibit 1 at 58). In addition, in its pending price filing, Pacific Bell proposes significant changes to its current regulatory framework, the effect of which would be to allow Pacific Bell upward pricing flexibility for services not currently subject to competitive pressure. (Ibid. at 58).

Finally, the Commission also must consider the fact that a potential competitor will be lost as result of SBC's acquisition of Ameritech. Clearly, the loss of an \$80 billion potential competitor who would put competitive pressure on Ameritech and CLECs in and of itself prevents the Commission from concluding that this acquisition is not likely to have any adverse impact on rates.

In sum, the exorbitant premium SBC is paying to acquire Ameritech, SBC's plan to use Ameritech revenues for out of region competitive ventures, SBC's adverse price impacts on Pacific Bell and the loss of a powerful potential competitor make it impossible for the Commission to find as required by Section 7-204(b)(7) that the proposed acquisition is not

likely to result in any adverse rate impacts on retail customers. Therefore, Section 7-204(b)(7) requires the Commission to reject SBC's proposed acquisition of Ameritech.

A. The Commission Should Utilize Its Section 7-204(f) Authority To Condition Its Approval, If Granted, On SBC/Ameritech Meeting Certain Requirements Essential To Insure The Protection Of The Public Interest

The record in this proceeding clearly establishes that the Commission must reject SBC's proposed acquisition of Ameritech, because as proposed it is likely to result in a significant adverse effect on competition in Illinois and adverse rate effects on retail customers. (See, supra). In the alternative, however, if the Commission nonetheless approves the proposed acquisition, NEXTLINK strongly urges the Commission to use the broad discretion vested in it by Section 7-204(f) of the Act to impose "such terms, conditions and requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers." (220 ILCS 5/7-204(f)).

Specifically, NEXTLINK is recommending that the Commission impose conditions on SBC/Ameritech patterned after those imposed by the FCC in its approval of the Bell Atlantic Corporation ("Bell Atlantic") merger with NYNEX Corporation ("NYNEX"). NEXTLINK's recommendations further are designed to tighten the pro-competitive requirements adopted in that matter so that SBC/Ameritech cannot sidestep their intent as Bell Atlantic/NYNEX has done in many instances. (NEXTLINK Exhibit 1 at 18; See also, In the Application of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, 12 FCC Rcd 19985).

In addition, NEXTLINK urges the Commission to require that Ameritech receive FCC approval under Section 271 of the Telecom Act that it has met the competitive checklist prior to implementing SBC's proposed acquisition. (See, NEXTLINK Exhibit 2 at 10). Such a condition is consistent with the treatment of the Section 271 issue by certain states in the Bell Atlantic/NYNEX merger (as discussed infra). Moreover, SBC/Ameritech's post-merger strategy by its own admission cannot be implemented without Section 271 approval. (Transcript at 530 and 945).

1. The Bell Atlantic/NYNEX Experience Demonstrates That The Commission Must Impose Strong and Enforceable Conditions To Protect The Public Interest and Competitive Market From A Post-Acquisition Incumbent Monopoly.

The Bell Atlantic/NYNEX merger is instructive as an example of the pitfalls associated with approving the acquisition of one incumbent monopoly by another and the need for strong and enforceable conditions to protect the public interest and the development of market competition. Certainly, the FCC viewed conditions as essential for its approval of that merger.² (NEXTLINK Exhibit 1 at 14-15; In the Application of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, 12 FCC Rcd 19985, 19986-87). And while the Bell Atlantic/NYNEX merger was a very large transaction, the SBC acquisition of Ameritech is larger in terms of market value and the number of access lines to be consolidated. (NEXTLINK Exhibit 1 at 15).

² The FCC imposed its conditions on the Bell Atlantic/NYNEX merger based on statutory authority very similar to this Commission's 7-204(f) authority. (See, Section 214(c) of the Communications Act of 1934).

In exchange for FCC approval of its acquisition of NYNEX, Bell Atlantic made a series of commitments, including commitments to measure its performance and provide performance reports. (Applications of NYNEX Corp., Transferor and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, 12 FCC Rcd 199895). Once the acquisition was completed, however, Bell Atlantic began to backtrack from its FCC commitments. Moreover, Bell Atlantic also has fought efforts to introduce pro-competitive steps taken in New York to other states in its incumbent monopoly territory. (NEXTLINK Exhibit 1 at 16).

For example, Bell Atlantic has sought to comply with its performance reporting requirement through the use of aggregate performance measures so that it could mask performance for individual CLBCs. (Ibid.). It also has refused to negotiate meaningful performance remedies for its substandard performance and has built into its performance remedies significant exceptions to hide any poor performance, such as refusing even to report certain transactions that it did not view as "statistically insignificant" because they did not meet numerical thresholds determined by Bell Atlantic. (Ibid. at 16 and 19). In one such instance, Bell Atlantic has refused to report anything less than 1000 orders made by any carrier on a monthly basis. (Ibid. at 19). The FCC repeatedly has had to direct Bell Atlantic to improve or correct the performance reports that it committed to file with the FCC. (NEXTLINK Exhibit 1 at 17 and Attachment 3 thereto).

(a) Pre-Approval Conditions

Learning from this history, it is necessary that several conditions be met prior to Commission approval of the acquisition. NEXTLINK therefore urges the Commission to adopt

as a term or condition of approving the proposed acquisition that Ameritech meet all 14-points of the Section 271 checklist as determined by the FCC prior to implementation of this transaction. Importantly for this proceeding, the FCC specifically discussed the merits of requiring Section 271 approval as a precondition of approval of the Bell Atlantic/NYNEX merger. (In the Application of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, 12 FCC Rcd 19985, 20080-0081). Although the agency ultimately did not impose such a precondition or establish a specific timetable for implementing Section 271 requirements, the FCC did state in the Bell Atlantic/NYNEX case that "the expeditious fulfillment by the Bell Companies of the competitive checklist . . . would certainly be in the public interest."³ (12 FCC Rcd at 20080).

In deciding against preconditioning the Bell Atlantic/NYNEX merger on Section 271 compliance, the FCC stated its belief that the statutory requirement that merging RBOCs satisfy the Section 271 checklist before offering long-distance provided a strong incentive for them to open their local markets to competition. (12 FCC Rcd at 20080). Experience has shown, however, that the FCC was overly optimistic in its assessment of the motivation provided to Bell Atlantic/NYNEX and to other RBOCs to open their local markets to competition. In fact, no RBOC to date has met the competitive checklist set forth in Section 271. (NEXTLINK Exhibit 1 at 9).

The FCC two years ago rejected Ameritech's application under Section 271 to provide long-distance service originating in Michigan based on Ameritech's failure to meet any of the checklist requirements in that local market. (In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543 (August 19, 1997)). As NEXTLINK

witness Mr. Gonzalez testified, Ameritech since that time has not pursued Section 271 authority for Illinois or any of its other in-region states. (NEXTLINK Exhibit 1 at 9). In fact, Ameritech Chairman and Chief Executive Officer Richard Notebaert recently stated that Ameritech is "done" with Section 271, indicating that Ameritech has no intention of opening its local market in Illinois to competition under the terms of the 14-point checklist. (NEXTLINK Exhibit 2 at 10 and Exhibit 5 thereto).

Similarly, SBC has failed to meet the Section 271 checklist requirements in its home state of Texas or in California through Pacific Bell. As Mr. Gonzalez testified, the state public utility commissions in Texas and the state public utility commission staff in California recently concluded that SBC has not met the checklist requirements. (NEXTLINK Exhibit 1 at 9).⁴ SBC's actions in California and Texas make it clear that the Commission cannot depend on SBC's representations regarding any specific steps and/or timeline it would be willing to undertake to assure compliance with Section 271 after its proposed acquisition of Ameritech is approved.

Of possibly even greater concern, SBC/Ameritech's post-merger strategy is by the companies' own admission dependent on the ability to offer long-distance service, which cannot occur without Section 271 relief. SBC/Ameritech has made vague representations that it expects to receive Section 271 approval at some future date. (Transcript at 526 and 955). Yet

³ In approving the SBC merger with Pacific Telesis Group, the FCC did not address whether requiring Section 271 compliance as a precondition to approval would be in the public interest, instead reserving the opportunity to address the competitive dangers of non-compliance in a future proceeding. (12 FCC Rcd 2624, 2662-663).

⁴ See also, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16521, Public Utility Commission of Texas, Commission Recommendation (May 21, 1998); California Public Utilities Commission Telecommunications Division Final Staff Report, Pacific Bell (U 1001 C) and Pacific Bell Communications Notice of Intent to File Section 271 Application for InterLATA Authority in California (October 5, 1998)).

SBC/Ameritech has no answer for why this Commission should ignore the significant risks created in the event that its proposed acquisition were approved but Section 271 relief was not obtained. Asked why SBC does not wait until after receiving Section 271 relief before pressing forward with its proposed multi-billion-dollar acquisition of Ameritech, SBC Witness Mr. Kahan blithely stated: "We don't want to." (Transcript at 532). Clearly, Mr. Kahan's position should not suffice to inform the Commission that the public interest is being served. Therefore, the Commission should require Ameritech to open its Illinois market to competition by attaining FCC Section 271 approval prior to implementation of SBC's acquisition of Ameritech.

The Commission should also require SBC/Ameritech to establish mandatory and detailed performance reporting requirements to enable competitive service providers to determine quickly and clearly whether SBC/Ameritech is providing service to them in a non-discriminatory manner. (NEXTLINK Exhibit 1 at 20). These performance reporting requirements must require SBC/Ameritech to report all service transactions on a disaggregated company-by-company basis, including all CLECs and Ameritech itself. Moreover, the Commission must not permit SBC/Ameritech to use any statistical model that allows "bad" performance in one service category to be offset by "good" performance in another service category. (*Ibid.*).

Additionally, the Commission should impose a duty on SBC-Ameritech to negotiate interconnection agreements with enforcement mechanisms that ensure compliance with each performance standard. As a part of this approach, the Commission should require SBC-Ameritech to include incident-based liquidated damage enforcement provisions. (NEXTLINK Exhibit 1 at 20 and 21; See also, ICC Staff Exhibit 3.0 at 66). These enforcement provisions are administratively efficient because they require little regulatory oversight and ensure that the

incumbent monopoly has the right incentive to provision service at the statutory "parity" standard. (NEXTLINK Exhibit 1 at 21).

The Commission further should direct SBC-Ameritech to focus resources on the identification and adoption of "best practices" for its interactions with CLECs. Moreover, SBC-Ameritech should be required to report to the Commission on how the post-acquisition monopoly will identify, implement, and maintain a system of "best practices" for providing services to CLEC customers. (ICC Staff Exhibit 3.0 at 67).

(b) Post-Approval Conditions

As a part of its ongoing monitoring, the Commission should require SBC/Ameritech to submit to a post-approval compliance proceeding that would be conducted on an annual basis until SBC-Ameritech demonstrates that the Illinois market is irreversibly open to competition. (NEXTLINK Exhibit 1 at 21). Such proceedings would require SBC/Ameritech to demonstrate that it is in full compliance with all federal and state conditions and requirements. (Ibid.).

The Commission also should adopt a post-approval condition that would require SBC/Ameritech to offer in Illinois any technically feasible service, facility, and/or interconnection arrangement that SBC/Ameritech currently or subsequently provides in any other state within its combined service territory. (Ibid.). This condition would ensure that competitors in Illinois would be able to take advantage of the same arrangements that SBC/Ameritech offers competitors in other states.

IV. CONCLUSION

The Commission should reject the proposed acquisition of Ameritech by SBC on the grounds that it fails to meet the statutory requirements of Sections 7-204(b)(6) and 7-204(b)(7) of the Act because the Commission cannot find either (a) that the acquisition is not likely to have a significant adverse effect on competition in the markets over which the Commission has jurisdiction, or (b) that the acquisition is not likely to result in any adverse rate impacts on retail customers. In the event the Commission nonetheless approves the acquisition, the Commission should impose both pre-approval and post-approval conditions on SBC-Ameritech to provide protection to competitors and produce an open local exchange market.

WHEREFORE, NEXTLINK respectfully requests that the Commission reject to proposed acquisition, but in the event the Commission approves the acquisition, NEXTLINK respectfully requests that the Commission impose the pre-approval and post-approval conditions set forth in this Initial Brief.

Respectfully submitted,

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ATTACHMENT TWO

Value of Benchmarking for Competitive Carriers

NEXTLINK has discussed with every large incumbent local exchange carrier in the country NEXTLINK's proposal to establish additional, or "backup" routing from NEXTLINK's switch(es) to the incumbent's signaling network. NEXTLINK's redundant routing proposal for interconnection of SS7 networks provides NEXTLINK with additional assurance that their subscribers will not be isolated from other networks because of problems arising in the signaling network.¹ Initially, NEXTLINK was rebuffed by several carriers until NEXTLINK was able to reach an agreement with Southwestern Bell and GTE to test and implement this proposal. Now that NEXTLINK has signed agreements and begun to implement its redundant routing proposal, NEXTLINK intends to continue its negotiations regarding this proposal with the other remaining carriers.

NEXTLINK has made an effort to obtain access to "extended loops" from every incumbent local exchange carrier. Extended loops were initially provided by NYNEX in New York under tariff and several new entrants, including NEXTLINK obtained access to extended loops under the terms and conditions of the Interconnection Agreements.² Extended loops were provided voluntarily by only one incumbent LEC in 1996, and other incumbents made no effort to provide new entrants with access to this type of loop. Nevertheless, NEXTLINK and other competitive LECs were able to build upon their experience with extended loops from NYNEX in New York in negotiations and arbitration with other incumbents.³ The fact that NEXTLINK could point to its practical and successful use of extended loops in New York was valuable and persuasive evidence

¹ See Attachment 1 for a diagram of NEXTLINK's redundant routing proposal.

² In New York, loops are referred to as "links" and therefore this UNE is referred to as an "extended link."

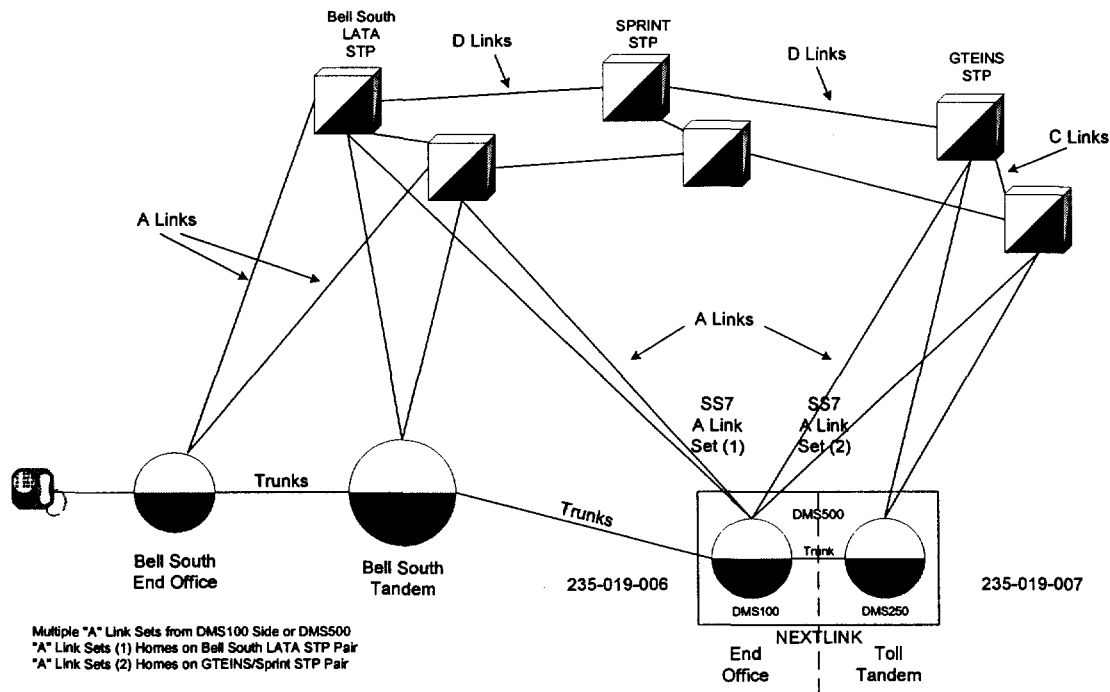
³ See e.g., Petition of NEXTLINK Utah, Inc., for Arbitration of an Interconnection Agreement with U S WEST Communications, Inc., Pursuant to 47 U.S.C. Section 252, Utah Public Service Commission, Docket No. 98-2208-03.

in other states that the extended loop was in fact a technically feasible point of access to the loop for competitors, and that it contributed significantly to promoting local competition.

The impact of a merger on competitors' ability to work with a diverse group of incumbents and build upon innovations and advancements made by a single carrier are nowhere clearer than here. After Bell Atlantic merged with NYNEX, the merged Bell Atlantic began a concerted effort to eliminate the extended loop as an option for competitive LECs. Bell Atlantic made efforts to withdraw its tariff offering in New York, and was adamantly opposed to NEXTLINK's efforts to obtain extended loops in other Bell Atlantic states.⁴ NEXTLINK can only assume that Bell Atlantic would continue its efforts to eliminate this option in GTE's territories if it is allowed to merge with GTE.

⁴ See e.g., Petition of NEXTLINK Pennsylvania, L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-PA, Inc. Pursuant to 47 U.S.C. § 252, Docket No. A-310260-F0002.

NEXTLINK SS7 Network Optimization



The above diagram shows NEXTLINK's Redundant Routing SS7 Network Configuration. NEXTLINK requests two sets of A Link Sets for interconnection with the Incumbent LEC's network (this diagram refers to BellSouth). This SS7 signaling arrangement uses additional SS7 network elements that provide a wide array of flexibility for NEXTLINK's telecommunication needs. The additional SS7 A Link Set adds another level of efficiency, redundancy and inter-network reliability that both NEXTLINK and the Incumbent LEC can provide to their end user customers. The SS7 A Link Set 1 optimizes local and transit trunk group signaling between NEXTLINK and the Incumbent LEC by using a direct SS7 signaling path where direct trunking is in place. The direct SS7 signaling path using SS7 A Link Set 1 will act as the primary signaling path and is the primary path for SS7 supported call setup between NEXTLINK and the Incumbent LEC. In the event of loss of SS7 A Link Set 1 continuity or signaling link congestion, SS7 A Link Set 2 would be used as the alternate and would automatically be selected by the Incumbent LEC LATA STP and the NEXTLINK SSP when congestion or link outage is sensed by the network elements. The Incumbent LATA STP and the NEXTLINK SSP have the internal automatic ability to perform primary and alternate routing of SS7 trunk signaling messages through switch database translations.